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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,739	09/11/2003	Nurettin Burcak Beser	0023-0094	3455

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EXAMINER
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NGUYEN BA, HOANG VU A

ART UNIT	PAPER NUMBER
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2421

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10/24/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

10/659,739

**Applicant(s)**

BESER, NURETTIN BURCAK

**Examiner**

Hoang-Vu A. Nguyen-Ba

**Art Unit**

2421

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 22 September 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Hoang-Vu Antony Nguyen-Ba/  
Primary Examiner, Art Unit 2421

Continuation of 11. does NOT place the application in condition for allowance because: With respect to Claim 1, Applicants essentially submit that Mahesh does not disclose or suggest "commanding at least one of the one or more cable modems to change its transmission characteristics based on monitored quality." However, the Office found that this feature is anticipated by Mahesh teachings of the headend that automatically and dynamically reconfigures a particular channel to utilize a different modulation profile that is better suited for transmitting data in light of the newly detected channel condition when the channel conditions have deteriorated (4:52-57). Furthermore, Applicants submit that Mahesh does not teach or suggest that the commanding step "includ[es] changing from a first preamble length to a second different preamble length." This feature is deemed suggested by Mahesh since the transmission characteristics or modulation profile is well known in the art to include preamble and preamble length (2:54-58), which can be dynamically specified/appended to the beginning of each burst after the transmitted data is FEC encoded and randomized. See Quality-of-Service: a DOCSIS/PacketCableTM Perspective Part 1 (SPECS News & Technology from CableLabs - Vol. 12, No. 3, April 2000). It should be noted that the citation of the CableLabs document is not a new ground of rejection but merely to show that the teachings of preamble and preamble length is well known in the art.

With respect to Claims 18-21, since the rejection of claim 17 is incorporated, the same response as discussed above is deemed applicable to these claims as well.

With respect to Claims 1-16 and 22-41,

Claim 1: Applicants essentially submits that Millet does not disclose or suggest "transmitting on a second, different upstream channel." In response, it is noted that Millet does disclose a physical receiver U0 can have two logical ports /receivers L0 and L1 which are two logical channels (11:34-35) and an upstream channel change command (11:41). Thus, it is deemed logical that in order to execute the upstream channel change command there should necessarily be at least two different channels. Therefore, contrary to Applicants' assertion, Millet does suggest "transmitting on a second, different upstream channel."

Claims 2-8: since these claims depend from claim 1, the response with respect to claim 1 is deemed applicable to these claims as well.

Claims 9, 27, 30 and 33: since these claims recite features similar to those of claim 1, the same response discussed in claim 1 is deemed also applicable to these claims.

Claims 10-16: since these claims depend from claim 9, the same response discussed in Claim 27 also applies to these claims.

Claims 28 and 29: since these claims depend from claim 27, the same response discussed in claim 27 also applies to these claims.

Claims 31 and 32: since these claims depend from claim 30, the same response discussed in claim 30 also applies to these claims.

Claims 34-36: since these claims depend from claim 33, the same response discussed in claim 33 is also applicable to these claims.

Claim 22: Applicants essentially submits at page 12, 2<sup>nd</sup> paragraph that Millet et al. has nothing to do with changing from a first time division multiplexed timeslot size to a second time division multiplexed timeslot size. In response, it is noted that these features do not appear to be recited in Claim 27. Therefore, the argument is moot.

Claims 23-26: since these claims depend from claim 22, the same response discussed in claim 22 also applies to these claims.

Claim 37: Applicants essentially submits that Millet does not disclose or suggest selectively command at least one of the one or more cable modems to switch between different virtual upstream channels based on the signal quality monitoring. In response, it is noted that Millet does disclose a physical receiver U0 can have two logical ports /receivers L0 and L1 which are two logical channels (11:34-35) and an upstream channel change command (11:41). Thus, it is deemed logical that in order to execute the upstream channel change command there should necessarily be at least two different channels. Therefore, contrary to Applicants' assertion, Millet does suggest "selectively command at least one of the one or more cable modems to switch between different virtual upstream channels based on the signal quality monitoring.

Claims 38-40: since these claims depend from claim 37, the same response discussed in claim 37 also applies to these claims.

Claim 41: since claim 41 recites similar features of claim 22, the same response discussed in claim 22 also applies to claim 41.